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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,070	07/25/2001	Aaron Joel Loyd	10006615-1	6454

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
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EXAMINER

PHILLIPS, HASSAN A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/915,070
Filing Date: July 25, 2001
Appellant(s): LOYD, AARON JOEL

Robert W. Nelson (37,898)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 6, 2005 appealing from the Office action mailed April 7, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,974,457	WACLAWSKY et al.	10-1999
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3, 7-9, 13, 17, 19-21, 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Waclawsky et al. (hereinafter Waclawsky), U.S. Patent 5,974,457 (supplied by Applicant).

In considering claims 1 and 13, Waclawsky teaches a method and monitoring device for monitoring the operation of an electronic network, the network comprising a first electronic device and a second electronic device, the method comprising: determining the utilization of some media, or network component between the first electronic device and the second electronic device, (col. 7, lines 18-20, and col. 12, lines 22-43); comparing the utilization of the media over a period of time, (col. 7, lines 18-20); and providing an indication if the utilization of the media increases or decreases a preselected amount during the period of time, (col. 7, line 20 through col. 8, line 6).

Although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: the media being a plurality of data paths.

Nevertheless, Waclawsky does teach: effecting routing changes after being provided with an indication that current network operating characteristics are outside the bounds of normal behavior, (col. 7, lines 60-67, col. 8, lines 1-6).

Thus, if not implicit in the teachings of Waclawsky, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Waclawsky to disclose the media as a plurality of data paths. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could be used to monitor data paths, and determine when a data path is no longer operating normally, Waclawsky col. 7, lines 16-34.

In considering claim 3, the teachings of Waclawsky provide a means for determining the utilization of a first data path and a second data path by performing a plurality of measurements, (col. 7, line 16 through col. 8, line 6).

In considering claims 7 and 19, the teachings of Waclawsky provide a means for performing a plurality measurements of a parameter of the network on a first data path, and wherein the providing an indication comprises providing an indication if the value of at least one of the plurality of measurements exceeds the value of the average of previous measurements by a preselected amount, (col. 4, lines 55-67, col. 5, lines 1-4).

In considering claims 8 and 20, although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: Not using exceeded average values of measurements, or preselected values, to calculate subsequent average values.

Nevertheless, Waclawsky does teach: A benchmark that can accumulate a more accurate average than a predefined average, (col. 4, lines 55-67, col.5, lines 1-4).

Hence, it would have been apparent to one of ordinary skill in the art that the teachings of Waclawsky provide a means for not using exceeded average values of measurements, or preselected values, to calculate subsequent average values, and thus it would have been obvious for a person of ordinary skill in the art to modify teachings of Waclawsky to show this. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could be used to progressively accumulate a more accurate representation of expected behavior for a network.

In considering claims 9 and 21, although the method taught by Waclawsky shows substantial features of the claimed invention, it fails to expressly disclose: Providing an indication if a measurement exceeds the mean plus three times the square of the mean of a previous measurement.

Nevertheless, Waclawsky does teach: Providing an indication if a measurement exceeds the bounds of normal behavior, col. 7, lines 60-67, col. 8, lines 1-6.

Hence, it would have been apparent to one of ordinary skill in the art that the teachings of Waclawsky provide a means for indicating if a measurement exceeds the mean plus three times the square of the mean of a previous measurement, and thus it would have been obvious for a person of ordinary skill in the art to modify teachings of Waclawsky to show this. Doing so would have demonstrated a specific example of how the teachings of Waclawsky could effectively be used to monitor the operation of an electronic network, Waclawsky col. 7, lines 16-34.

In considering claim 17, Waclawsky teaches the parameter being response time, (col. 8, lines 39-49).

In considering claim 24, Waclawsky teaches providing a plurality of measurements of a parameter of the network on a first data path between the first electronic device and the second electronic device, and wherein the providing an indication comprises providing an indication if the values of the plurality of measurements exceed a preselected value for a preselected period, (col. 7, line 16 through col. 8, line 6).

(10) Response to Argument

With regards to claims 1 and 13, Appellants first argue on pages 6, 7, and 10, section II, that a *prima facie* case of obviousness has not been established.

In response, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, if not implicitly taught by Waclawsky, one of ordinary skill in the art would have readily recognized the advantages of modifying Waclawsky to produce the claimed invention since Waclawsky suggests monitoring the operation of an electronic network to effect routing changes after being provided with an indication that current network operating characteristics are outside the bounds of normal behavior, (Waclawsky, col. 7, line 60-col. 8, line 6). Furthermore, Examiner maintains a person of ordinary skill in the art it would have found it obvious to modify the teachings of Waclawsky to produce Appellants claimed invention to demonstrate a specific example of how the teachings of Waclawsky could be used to monitor data paths, and determine when a data path is no longer operating normally, (Waclawsky col. 7, lines 16- 34).

With regards to claims 1 and 13, Appellants further argue on pages 8-10, section I, that Waclawsky does not teach or suggest "providing an indication if said utilization of said first data path increases a preselected amount and said utilization of said second data path decreases a preselected amount during said period of time".

In response, the Examiner has acknowledged in previous actions that Waclawsky does not expressly teach such a limitation. Nevertheless, Examiner maintains it would have been obvious to one of ordinary skill to modify the teachings of Waclawsky to produce such a limitation for reasons previously indicated. Furthermore, Appellants recognize that while teachings of Waclawsky may be utilized to monitor a single data path, there is no teaching of monitoring a second data path, (see page 9 of the Appeal Brief). Examiner further submits that such a modification would have also been obvious to one of ordinary skill in the art. If monitoring a second data path was not implied in the teachings of Waclawsky, such a feature would have only been a duplication of the functionality utilized to monitor the first data path. It has been held that mere duplication of an essential feature involves only routine skill in the art, (*St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8).

With regards to claims 8 and 20, Appellants argue on page 11, section II, that Waclawsky does not disclose or suggest “wherein the values of said plurality of measurements that exceed said value of the average of previous measurements plus a preselected value are not used to calculate subsequent average values”.

In response, the Examiner submits such a claim limitation is a “negative use” claim limitation and may be interpreted broadly by one of ordinary skill since “wherein the values of said plurality of measurements that exceed said value of the average of previous measurements plus a preselected value are not used to calculate subsequent average values” suggest that anything other than the values of said plurality of

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measurements that exceed said value of the average of previous measurements plus a preselected value can be used to calculate subsequent average values. Examiner thus maintains a benchmark that can accumulate a more accurate average than a predefined average, as taught by Waclawsky (col. 4, line 55-co1.5, line 4), suggests anything other than the values of said plurality of measurements that exceed said value of the average of previous measurements plus a preselected value.

With regards to claims 9 and 21, Appellants argue on pages 11-12, section II, that Waclawsky does not disclose or suggest "said providing an indication comprises providing an indication if the value of one of said plurality of measurements exceeds the mean of previous measurements of said parameter plus three times the square of said mean of previous measurements".

In response, Examiner has acknowledged in previous actions that Waclawsky does not expressly teach such a limitation. Nevertheless, Examiner maintains the claimed limitation is an obvious variation of the teachings of Waclawsky. Waclawsky teaches providing an indication if a measurement exceeds the bounds of normal behavior, (Waclawsky, col. 7, line 60-col. 8, line 6). One of ordinary skill in the art would readily recognize the advantages of modifying Waclawsky to disclose providing an indication if the value of one of said plurality of measurements exceeds the mean of previous measurements of said parameter plus three times the square of said mean of previous measurements because this would show by way of example one of many well

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known means for providing an indication if a measurement exceeds the bounds of normal behavior.

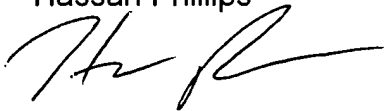
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

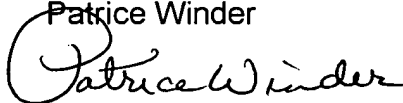
Respectfully submitted,

Hassan Phillips



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